

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

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Docket No. 183,524

## ORDER

On September 18, 1995, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Special Administrative Law Judge William F. Morrissey on June 8, 1995, came regularly on for oral argument.

## APPEARANCES

Claimant appeared and was represented by and through her attorney Jim Lawing of Wichita, Kansas. Respondent and insurance carrier appeared by and through their attorney Vaughn Burkholder of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney Scott J. Mann of Hutchinson, Kansas. There were no other appearances.

## RECORD

The record as specifically set forth in the Award of the Special Administrative Law Judge is herein adopted by the Appeals Board.

## STIPULATIONS

The stipulations as specifically set forth in the Award of the Special Administrative Law Judge are herein adopted by the Appeals Board.

### ISSUES

What is the nature and extent of claimant's injury and/or disability?

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole record and considering the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The findings of fact and conclusions of law stated by the Special Administrative Law Judge's Award adequately set out the appropriate findings and conclusions in this matter and a recitation of same herein is unnecessary. The Appeals Board adopts the findings and conclusions in the Award of the Special Administrative Law Judge insofar as they are not inconsistent with the findings herein. The analysis set forth by the Special Administrative Law Judge accurately addresses the facts and conclusions deemed by the Appeals Board to be both appropriate and significant in this matter, and is hereby adopted by the Appeals Board as its own.

The Appeals Board finds claimant has suffered a forty-two percent (42%) permanent partial general body work disability as a result of her injuries suffered while employed with respondent. This work disability stems from the problems associated with the claimant's employment with respondent and based upon the medical opinion of Dr. Miguel Pirela-Cruz the treating physician in this matter. While Dr. Pirela-Cruz' testimony is at times hesitant and nonspecific he does, nevertheless, find that claimant's work duties did cause some aggravation of claimant's ongoing symptomatology. The Appeals Board finds that Dr. Pirela-Cruz' testimony coupled with that of the claimant is sufficient to show that claimant suffered accidental injury as a result of her work duties with respondent.

In analyzing the testimony of Mr. Jerry Hardin and Ms. Karen Crist Terrill regarding claimant's loss of access to perform work in the open labor market and loss of ability to earn a comparable wage no greater emphasis was placed on the opinion of one expert over that of the other and the Appeals Board sees no reason to do so in this case. See Hughes v. Inland Container Corp., 247 Kan. 407, 799 P.2d 1011 (1990). As such, the Appeals Board finds that claimant has proven by a preponderance of the credible evidence a forty-two percent (42%) permanent partial general body work disability as found by the Special Administrative Law Judge.

### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey should be and is hereby affirmed and that an Award is made in favor of the claimant, Janet Kay Mardis, and against the respondent, The Boeing Company, and its insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund for an accidental injury occurring on June 30, 1992, and based upon an average weekly wage of \$733.68, for 34.71 weeks temporary total disability compensation at the rate of \$289.00 per week in the sum of \$10,031.19, followed thereafter by 380.29 weeks permanent partial general body disability

compensation at the rate of \$205.44 per week, in the sum of \$78,126.78, for a 42% permanent partial general body work disability, making a total award of \$88,157.97.

As of September 29, 1995, there is due and owing claimant 34.71 weeks temporary total disability compensation at the rate of \$289.00 per week in the sum of \$10,031.19, followed thereafter by 134.86 weeks permanent partial general body work disability at the rate of \$205.44 per week in the sum of \$27,705.64, for a total of \$37,736.83 due and owing in one lump sum minus any amounts previously paid. Thereafter, the remaining 245.43 weeks permanent partial general body disability shall be paid at the rate of \$205.44 per week until fully paid or until further order of the Director.

Future medical benefits are awarded upon proper application to and approval by the Director.

Unauthorized medical expenses of up to \$350.00 are ordered paid to or on behalf of the claimant upon presentation of an itemized statement verifying same.

All compensation, medical expenses and administration costs are to be borne 61% by the respondent and 39% by the Kansas Workers Compensation Fund.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed 61% to the respondent and 39% to the Kansas Workers Compensation Fund to be paid as follows:

William F. Morrissey Special Administrative Law Judge	\$150.00
Ireland Court Reporting Transcript of Preliminary Hearing	\$197.50
Barber & Associates Transcript of Motion Hearing	\$127.10
Deposition Services Transcript of Regular Hearing	\$169.10
Deposition of Amy M. Weber	\$294.80
Deposition of Karen Crist Terrill	Unknown
Don K. Smith & Associates Deposition of Miguel Pirela-Cruz, M.D. (1-18-94)	\$362.00
Deposition of Jerry D. Hardin	\$323.25
Deposition of Joseph I. Fellers	\$896.00
Deposition of Beverly Ann Guyot	\$165.00
Deposition of Miguel Pirela-Cruz, M.D. (11-21-94)	\$205.00

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October, 1995.

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BOARD MEMBER

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BOARD MEMBER

c: Jim Lawing, Wichita, Kansas  
Vaughn Burkholder, Wichita, Kansas  
Scott J. Mann, Hutchinson, Kansas  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director